

follows: if the petitioner is a barrister of England and has obtained the post-graduate certificate he is only required to read six months in the chambers of a local practising practitioner.

In any event, the proviso provides an equation as to the length of the notional reading in chambers. It was argued before us for the Bar Council that the notional reading of six months can only arise if the post-graduate course precedes local reading in chambers. It is the validity of this argument that calls for consideration. Does the section stipulate such a situation? I admit freely that the section seems to be capable of that construction. No doubt if you read it literally it does seem to provide that where a petitioner has obtained a post-graduate certificate "the provisions of this paragraph shall apply "as if he had been a pupil or read in chambers as aforesaid for a period of six months". There appeared to have been a statutory fiction gone through, the result of which is that the post-graduate certificate stands on the same footing as if the petitioner had been a pupil or read in chambers for a period of six months. But, on the other hand, is that the only interpretation? For that purpose, I think, we must consider what the object of this provision is. Why is it that there is this statutory fiction introduced? The section obviously is not one which has been prepared with much care or skill, or which shews indeed that the draftsman had fully present in his mind the various cases with which he had to deal. Now, I take it that the purpose of this section as it stood in 1961 was to accommodate the post-graduate course organised by the University of Malaya in Singapore. There was no such course in Kuala Lumpur. Unless I am told otherwise, the course in Singapore was conducted during office hours. The post-graduate course organised by the University in Kuala Lumpur was established in the latter part of 1965 and such a course, I am told, is conducted in the evening and outside office hours in order to allow practising practitioners to conduct it so that their routine business will not be interrupted.

The Bar Council conceded that if the petitioner had completed the post-graduate course done outside office hours and then followed by a six months local reading in chambers the petition is not objectionable. But they argued that if the petitioner had done the same post-graduate course outside office hours concurrently with the local reading in chambers for a period of six months it is said that that violates the object of the section. Their sole argument which commends itself to the trial judge rests on the word "previously" which appears immediately after paragraph (a) of the sub-section. It appears to them legitimate to say that the literal construction of the provisions of that section affords the stand which they have taken. I cannot subscribe

A to that view. That is to ignore the purpose and object of the post-graduate course which is essentially a course in advocacy as distinct from substantive law which is acquired in chambers. To my mind, the word "previously" has been strained beyond permissible limits and due regard has not been made to interpret the section in its proper context. It would be the height of absurdity to hold that while the reading in chambers for a period of six months which is preceded by a post-graduate course done outside office hours is good, the reading in chambers for a period of six months concurrently with the post-graduate course done outside office hours is invalid. When the language of the legislature construed literally involves such consequences, the court has over and over again acted upon the view that the legislature could not have intended to produce a result which would be palpably unjust, and would revolt the mind of any reasonable man, unless they have manifested that intention by express words.

I would allow the appeal and admit the petitioner.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.*

TAN TIAN QUEE v. KUPPUSAMY

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) April 6, 1967]

[Singapore — Federal Court Appeal No. Y19 of 1966]

Contract — Sale of land — Option to agent for — First option for sale with vacant possession — Second option for sale without vacant possession — Scope of authority of agent — Breach of contract.

Agency — Scope of authority of agent — Agent acting outside scope of authority.

The respondent gave a written option to his agent one N for the sale of his property at Kings Road, Singapore. Although there was no mention of vacant possession in the option N on February 23, 1963 represented to the appellant that the property was for sale with vacant possession. What transpired after this was not very clear but the appellant maintained that the parties had entered into a formal written contract on April 9, 1963 (although this was never produced in court) which the respondent denied. The respondent's case was that the appellant had given two options one of which stipulated the sale was with vacant possession and the other did not.

The appellant sued for specific performance of the contract for the sale of the property or alternatively damages for breach of contract. The respondent counter-claimed for refund of the deposit for failure on the appellant's part to complete. In the court below the trial judge dismissed the appellant's claim and allowed the counterclaim ([1966] 2 M.L.J. 226). On appeal,

Held: (1) in the circumstances of this case the second option clearly cut down and limited the agent's original authority to effect a sale. In the first option he had express authority to sell with vacant possession; in the second option by the palpable omission of all reference to this express condition his authority was limited to sell without vacant possession. Therefore in

writing the letter of February 23, 1963 and in stating that vacant possession would be given in 60 days, N was acting outside and beyond the scope of his authority;

(2) there was no binding contract entered into between the parties on February 23, 1963. The court however was not prepared to disturb the finding of the trial judge that a formal contract was entered into between the parties on April 9, 1963 although the contract was never produced in court and had mysteriously disappeared.

FEDERAL COURT.

Harry L. Wee for the appellant/plaintiff.

J. B. Jeyaretnam for the respondent/defendant.

Cur. Adv. Vult.

Buttrose J.: This was an action for specific performance alternatively, damages for breach of contract.

The plaintiff's case briefly was that on the 22nd February, 1963 the defendant appointed one Nagalingam as his agent to sell his property at 81 King's Road, Singapore, at any time between the 22nd February and 3rd March, 1963 and that by a letter dated 23rd February, 1963 Nagalingam as such agent offered to sell the property to the plaintiff with vacant possession at \$1 per square foot. On or about the same date the plaintiff orally accepted the offer but the defendant refused to be bound by it and to perform the contract while the plaintiff was at all material times ready and willing to perform his obligations thereunder.

The defendant's case was this:— He admitted appointing Nagalingam as his agent to sell 81 King's Road but he had no knowledge of Nagalingam's letter of 23rd February; that in offering vacant possession he was acting outside the scope of his authority and if the offer was accepted by the plaintiff the defendant was not bound thereby.

Nagalingam was unable to be called as a witness as he died on the 27th March, 1963.

The first and substantial issue for determination is whether or not a binding contract for the sale of the property with vacant possession was entered into by the parties on the 23rd February, 1963. The answer to this question depends on the construction and effect of two options which the defendant gave Nagalingam to sell his King's Road property. The circumstances under which these two options came to be given require examination.

The plaintiff said that on the 15th February, 1963, Nagalingam came to his office and showed him an option signed by the defendant in these terms:—

D. Kuppusamy,
22 Hillside Drive,
Singapore.
8th February 1963.

Option

Mr. I. Modr. Nagalingam,
Singapore.

I hereby give you option to sell my Freehold land known as No. 81 Kings Road, Singapore (Lot 33-8) at the rate of dollar One (\$1.00) per square foot. Vacant possession would be given to the buyer within 60 days from date of paying the initial deposit to my lawyers.

This option shall hold good for 10 days from the date of this chit, 8th instant.

Sd: D. Kuppusamy,
Owner of Property."

There was some haggling over the price. The plaintiff offered 90 cents per square foot and subsequently raised it to 95 cents per square foot.

On the 18th February, 1963, Nagalingam wrote a letter to the plaintiff stating that the defendant would not sell at less than \$1 a square foot. On the 20th February, 1963, he wrote another letter to the plaintiff stating that his option had expired on the 18th February, 1963, but that if the plaintiff instructed him he would get a new option for \$1. On the 21st February, 1963, Nagalingam spoke to the plaintiff on the telephone and asked him if he had received his letter of the 20th February and told him that he would renew the option if the plaintiff would buy at \$1 per square foot and the plaintiff said he would.

On the 23rd February, 1963, the plaintiff received a letter from Nagalingam enclosing the old option and a new one. The letter was as follows:—

Modr. Lingam & Sons
General Commission, House & Insurance
Agents & Real Estate Brokers.

306 Room
6 Cecil Street,
Singapore
23rd February 1963.

Dear Kim Yam,

Re: 81 Kings Road — Lot 33-8

I enclose herewith option received today for you to exercise it. The area is according to the grant. Vacant possession will be given within 60 days from the date of exercising the option. The amount payable to City Council for making road is \$5,200. I also enclose the previous option for your information.

The Deeds will be produced to your lawyers on exercising the option. I strongly advise you to exercise the option. The land in the locality is going up daily.

Thanking you.

Yours faithfully,
Sd: I. I. Modr. Nagalingam.

Kim Yam Esq.,
Messrs. Kim Contractors,
406 Dunearn Road,
Singapore.

P.S. — The owner has made an Agreement with City Council including int. \$6,000 to pay in 5

years time by instalments agreement will be produced to you. This sum will be paid by the vendor on completion."

The new or second option was as follows:—

" D. Kuppusamy,
22 Hillside Drive,
Singapore 22nd February 1963.

Mr. Modr. Nagalingam,
306 Room, No. 6 Cecil Street,
Singapore.

Option

This option is given to Mr. Modr. Nagalingam to sell my freehold property known as No. 81 Kings Road (Lot 33-8) at the rate of dollar One (\$1.00) per square foot. The option stands good for 10 days from the date of this note terminating on the 3rd March 1963.

Sd: D. Kuppusamy. "

On receipt of Nagalingam's letter of the 23rd February, 1963, the plaintiff spoke to him on the telephone and said he accepted the offer of \$1 per square foot with vacant possession. The plaintiff then telephoned his solicitors, Messrs. Hilborne, Chung & Co., and told them to act for him in the purchase of this property at \$1 per square foot with vacant possession and sent them all the correspondence together with the two options. In the first week in March, 1965, the plaintiff was requested by his solicitors to pay a deposit of 10 per cent of the purchase price which he did.

In the middle of March the plaintiff went to the office of his solicitors and saw their chief clerk, one Sabapathy, who showed him a draft agreement. Sabapathy told the plaintiff that the defendant did not approve of the draft agreement because of the 'vacant possession' clause and that the defendant could not give vacant possession.

The defendant's evidence on the subject was that on the 8th February, 1963, he gave an option to Nagalingam to sell the property with vacant possession at \$1 per square foot. The option was to expire on the 17th February. On the 13th February he informed his children and his son-in-law, one Ragunathan, about the option and told them his son Sundrarajah would have to vacate the property as he was selling it with vacant possession. Two days later the defendant was told that his son refused to vacate. The defendant became worried because the option given to Nagalingam mentioned vacant possession. Fortunately, however, for him the option was not exercised and he decided to sell the property without vacant possession. He then gave the second option to Nagalingam in which no mention of vacant possession was made. On the evening of the 22nd February, 1963, Nagalingam spoke to the defendant on the telephone and enquired as to why there was no mention of vacant possession in the second option. The defendant replied that it was because his son had refused to vacate the property.

On the 24th February, Nagalingam informed

A him that he had a buyer for the property and told him to hand the title deeds to Messrs. Hilborne, Chung & Co., immediately upon receiving their letter of acceptance. On the 1st March, 1963, the defendant received their letter of acceptance in these terms:—

"KEH/LCP/99/63.

B 28th February 1963.

Mr. D. Kuppusamy,
22 Hillside Drive,
Singapore.

Dear Sir,

Re: No. 81 Kings Road

C We act for Messrs. Kim Yam Contractors who instructs us that they have agreed to purchase this property from you comprising approximately 27,000 square feet at a price of \$1 per square foot.

If our instructions are correct, would you be kind enough to send us the title deeds of the property together with the contract of sale upon the signature of which, our clients will pay a deposit of 10% of the purchase price.

D Yours faithfully,
Sd: Hilborne, Chung & Co."

It is to be observed that there is no reference in the letter to vacant possession but the defendant was requested to forward the title deeds together with the contract of sale.

E On the following day he took the title deeds to their office and handed them to Sabapathy. He told Sabapathy that a formal contract of sale must be signed. On the 11th March, 1963, the defendant saw Sabapathy and enquired if the contract was ready for signature. Sabapathy asked him if he could give vacant possession and the defendant replied that he could not and had not agreed to do so. He said that his son who occupied the property had refused to vacate and that was why the option did not mention vacant possession.

G This evidence, I think, affords a sufficient background to the giving of these two options. What is the proper construction to be placed on them?

H The first option given by the defendant expressly stipulated that 'vacant possession would be given to the buyer within 60 days from the date of paying the initial deposit to my lawyer' (i.e. the defendant's lawyer).

The second option given by the defendant within 5 days of the expiry of the first option omitted entirely any reference to vacant possession.

I On the face of the two options read together it is clear, so it seems to me, that this was a deliberate and intentional omission which indicated as plainly as if it had been expressly stated that the second option was an option to sell without vacant possession.

This is the only reasonably possible construction that I am able to place on the two

documents when read together.

It is, I think, important to bear in mind in considering this question that the plaintiff had received and was already fully aware of the first option before he received the second option. In addition Nagalingam in his letter of the 23rd February, 1963, to the plaintiff enclosed the two options which, when placed side by side, would tend further to draw attention to and emphasize their essential difference.

I have little doubt that in so doing Nagalingam hoped to induce the plaintiff to think that the second option was but a renewal of the first option. The second option however, cannot, in my view, under any circumstances be regarded as a renewal of the first option. The first option was dead having expired on the 18th February, 1963. The second option was a completely new option with the provision as to vacant possession entirely omitted from it. If it had been desired to renew the first option on the same terms nothing would have been easier than to do it by endorsement thereon or provide for its renewal in so many words by another document.

In my opinion, in the circumstances of this case, the second option clearly cut down and limited the agent's original authority to effect a sale. In the first option he had express authority to sell with vacant possession; in the second option by the palpable omission of all reference to this express condition his authority was limited to sell without vacant possession.

It may well have been quite another matter if the plaintiff had only received or been aware of the second option when, under such an open option, a sale with vacant possession may be implied but such is not the case here.

In writing the letter of the 23rd February, 1963, Nagalingam was plainly, in my view, acting outside and beyond the scope of his authority and in accepting the offer contained therein the plaintiff was accepting an offer which Nagalingam had no power or authority to make.

Furthermore in his letter Nagalingam said that vacant possession would be given within sixty days from the date of exercising the option (i.e. the second option). Under neither of the options did he have any authority to do so as even under the first option it was expressly stated that vacant possession would be given sixty days from the date of payment of the initial deposit. By his letter Nagalingam purported to bind the defendant to giving vacant possession earlier under the second option than under the first option. In doing so, he was also, in my opinion, acting outside and beyond the scope of his authority.

In these circumstances, in my judgment, there was no binding contract entered into between the parties on the 23rd February, 1963.

A This is sufficient to dispose of the claim and it is unnecessary, nor do I propose, to deal with the other matters argued before us.

B The only remaining question which requires determination is the defendant's counterclaim. Now the defendant maintained that a formal contract was signed by both parties on the 9th April, 1963 at the office of Messrs. Hilborne, Chung & Co., who were at that time acting for both parties, for the sale of this property to the plaintiff at \$1 per square foot without vacant possession and counterclaimed for the payment to him of the deposit of \$2,700 paid by the plaintiff and held by the solicitors. The plaintiff on the other hand denied that such a contract was ever signed and disputed the counterclaim.

D In fact this contract was never produced and has mysteriously disappeared and the issue as to whether it ever existed or was ever executed was entirely a question of fact for the trial judge to resolve. He has reviewed the evidence on this subject with great care and thoroughness in his judgment and it is unnecessary, nor do I propose, to restate it.

E As the trial judge indicated there were only three persons who knew whether or not a contract was in fact signed by the parties on the 9th April, 1963, and they were the plaintiff, the defendant and Sabapathy. This is what he had to say about their evidence:—

F "In my view, when the evidence of the plaintiff, the defendant, and of Sabapathy is considered in the light of the correspondence to which I have referred, one is left in no doubt at all as to where the truth lies. Sabapathy on his admission is quite capable of telling a lie and is a totally unreliable witness. As for the plaintiff, in my view, he is not speaking the truth when he says that no formal contract was signed on the 9th April, 1963. He did not impress me as a truthful witness and I therefore reject his evidence. The defendant impressed me as a truthful witness. I accept his evidence that a formal contract was signed on the 9th April, 1963, in which the date of completion was set out as the 30th April, 1963."

H The trial judge found as a fact that the plaintiff and the defendant signed a formal contract on the 9th April, 1963, whereby the plaintiff agreed to purchase from the defendant the property in question at the price of \$1 per square foot without vacant possession and completion was to take place on the 30th April, 1963. The sale was not completed on the 30th April and on the 20th May the defendant gave notice making time of the essence of the contract. The trial judge held that the 5 days notice, under the circumstances, was reasonable and after the 25th May, 1963, the plaintiff was in breach of contract and the defendant was entitled to succeed on his counterclaim.

I I am unable to see any reason for disturbing the trial judge's findings of fact, with which I am in agreement, supported as they are, in my

opinion, by the inferences to be drawn from the documents and the probabilities of the matter. I am not unmindful in considering this aspect of the case of the need to approach with considerable caution a claim founded on secondary evidence of an alleged written contract but in the light of the clear and unequivocal findings of fact of the trial judge the matter is beyond doubt.

In the result, therefore, for these reasons the appeal must, in my judgment, be dismissed with costs.

Wee Chong Jin C.I. and Tan Ah Tah F.J. concurred.

Appeal dismissed.

Solicitors: C. J. Koh & Co.; Donaldson & Burkinshaw.

HO TONG CHEONG & ORS. v. OVERSEA-CHINESE BANKING CORPN. LTD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) April 6, 1967]

[Singapore — Federal Court Appeal No. Y48 of 1966]

Landlord and Tenant — Building operations by tenants on controlled premises in breach of statute — “Knowingly” committing breaches — Exposing landlord to any penalty, fine or forfeiture — Action for recovery of possession by landlord — Municipal Ordinance (S.S. Cap. 133), s. 144(7), (10) & (12) — Building by-laws — Control of Rent Ordinance (Cap. 242), ss. 14 & 15(1) (h).

Evidence — Election to call no evidence at trial — Fact especially within the knowledge of person — Burden of proof — Evidence which could be produced — Unfavourable presumption against withholding — Evidence Ordinance (Cap. 4), ss. 107 & 115(g).

This was an appeal against the judgment of the High Court allowing the respondent's claim for possession of certain controlled premises of which the appellants were monthly tenants on the ground that they had knowingly committed breaches of the Municipal Ordinance and the Building By-laws and had thereby exposed the respondents to a penalty or fine. It was not in dispute that the appellants commenced and completed building operations on the premises without submitting a plan to the proper authority and that they had breached section 144(7) of the Municipal Ordinance and the Building By-laws. The appellants argued that it had not been established that they committed the breaches “knowingly” and that the breaches exposed the respondent to a penalty, fine or forfeiture.

Held: (1) in view of the trial judge's positive finding of fact that the appellants carried out the building operations knowing full well that they were illegal, the respondents must be held to have succeeded in making out a case on any of the interpretations of the word “knowingly” previously considered by our courts;

(2) exposure to penalty, fine or forfeiture means that there must be exposure to conviction. Exposure to prosecution is not enough and there is no exposure to conviction unless facts exist which would support a conviction. The trial judge appreciated the position because he came to the conclusion that the breaches committed by the appellants would if made out in proceedings

against the respondent, lead to its conviction which would in its turn lead to a penalty, fine or forfeiture.

Per Curiam: “the object of the Control of Rent Ordinance is to fetter landlords and take away their common law rights and not to afford the tenant a statutory defence. Immediately the appellants committed a breach as outlined in section 15(1)(h) of the same Ordinance, they lost the protection given to them by the Ordinance and laid themselves open to ejection by the respondent which may at any time thereafter determine the contractual tenancy and recover possession of the premises from the appellants”.

Observations on the effect of section 107 of the Evidence Ordinance.

Cases referred to:—

- (1) *Sarah Cashin v. Goh Kah Seng* [1955] M.L.J. 52 at p. 55.
- (2) *Nathan Brothers v. Tong Nam Contractors Ltd.* [1959] M.L.J. 240 at p. 241.
- (3) *Zbytniewski v. Broughton* [1956] 3 All E.R. 348.
- (4) *Chung Lai Heng v. Murugappa Chettiar* [1952] M.L.J. 232.
- (5) *Ang Ah Bak v. S.E.A.C. Co.* [1966] 2 M.L.J. 45 affirmed by F.C., *sub nom. S.E.A.C. Co. v. Ang Ah Bak* [1967] 1 M.L.J. 170.
- (6) *Hooi Chuk Kwong v. Lim Saw Choo* [1958] M.L.J. 5 at p. 8.

FEDERAL COURT.

Tan Peng Khoo for the appellants/defendants.

S. H. D. Elias for the respondent/plaintiff.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiff claimed possession of premises at No. 203, South Bridge Road, Singapore, of which the defendants were monthly tenants on the ground that they had knowingly committed breaches of the Municipal Ordinance and the Building By-laws made thereunder affecting the premises which exposed the plaintiff to a penalty or fine.

Section 14 of the Control of Rent Ordinance (Cap. 242), (hereinafter referred to as ‘the Ordinance’), provides that “no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Ordinance”.

The plaintiff claimed it was entitled to possession under section 15(1)(h) of the Ordinance which reads as follows:—

“15(1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

- (h) where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture.”

The plaintiff's case was that by virtue of section 144(12) of the Municipal Ordinance